

151 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

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| Public Service Company of Colorado | Docket Nos. ER15-237-000 ER15-237-001 ER15-237-002 ER15-237-003 ER15-326-000 |
| Black Hills/Colorado Electric Utility Company, LP | ER15-295-000 ER15-295-001 ER15-295-002 ER15-348-000 ER15-348-001 ER15-348-002 |

**ORDER REJECTING PROPOSED JOINT DISPATCH AGREEMENT AND TARIFF
REVISIONS**

(Issued June 23, 2015)

1. In this order, we reject Public Service Company of Colorado's (PSCo) tariff revisions implementing Joint Dispatch Transmission Service and a Joint Dispatch Agreement to facilitate the centralized intra-hour dispatch of resources within PSCo's balancing authority area (BAA). PSCo, Black Hills/Colorado Electric Utility Company, LP (Black Hills), and Platte River Power Authority (Platte River) (collectively, the Parties) are the three parties to the Joint Dispatch Agreement. We also reject Black Hills' tariff revisions implementing the Joint Dispatch Transmission Service and a Joint Dispatch Concurrence Filing.

I. Background

2. PSCo filed tariff revisions implementing Joint Dispatch Transmission Service and a Joint Dispatch Agreement on October 30, 2014 and November 1, 2014, respectively.

Black Hills also filed tariff revisions implementing Joint Dispatch Transmission Service¹ and a Joint Dispatch Concurrence Filing² on October 31, 2014 and November 5, 2014, respectively.³ Together, these filings seek authority to implement centralized energy dispatch to use pooled generation to serve the combined participating native load requirements.⁴ Specifically, PSCo explains that the proposed tariff revisions reflect changes to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (Xcel Energy Tariff) designed to facilitate the joint dispatch of the generating resources of PSCo, Platte River, and Black Hills, and to provide the Parties with non-firm transmission service to be used to deliver the energy under the Joint Dispatch Agreement at no additional cost. PSCo also states that the purpose of its filings is to establish tariff provisions that provide corresponding non-firm transmission service to the Parties for the delivery of energy under the Joint Dispatch Agreement.

3. PSCo explains that, for some time, it has sought the efficiency benefits of integrated regional market operations.⁵ However, PSCo states that its opportunities to participate in the California Independent System Operator Corporation (CAISO) Energy Imbalance Market have been limited by factors beyond its control.⁶ To achieve some of these efficiencies, PSCo states that the Parties worked to establish the proposed Joint Dispatch Agreement to realize cost savings through a centralized system of energy dispatch within the PSCo BAA.

¹ Black Hills' tariff revisions to implement Joint Dispatch Transmission Service mirror those filed by PSCo. Ex. BHCE-1 Testimony of Eric Egge at 10 (Egge Test.).

² Black Hills' Concurrence Filing contains a Certificate of Concurrence with the Joint Dispatch Agreement and a Concurrence Tariff Record.

³ On November 7, 2014, PSCo filed a supplement to its October 31, 2014 filing in Docket No. ER15-326-000 noting that its attempt to file the Joint Dispatch Agreement on October 31, 2014 had an incorrect description.

⁴ The initial participants in the Joint Dispatch Agreement are PSCo, Black Hills, and Platte River. Joint Dispatch Agreement Transmittal at 1.

⁵ *Id.* at 3.

⁶ PSCo states that the Western Area Power Administration's Western Area Colorado Missouri Balancing Authority Area, which surrounds PSCo, announced that it does not intend to join a broader regional market in the west at this time. *Id.* at 4.

A. Joint Dispatch Agreement

4. The proposed Joint Dispatch Agreement codifies the relationship among all Parties in this system of coordinated energy dispatch. PSCo states that under the Joint Dispatch Agreement each party would commit sufficient generation resources to meet its own native load requirements, plus Operating Reserves, in addition to any system or unit power sales and purchases. PSCo would economically dispatch units committed under the Joint Dispatch Agreement using cost information provided by the Parties.⁷ This cost information would include heat rate, fuel prices, and non-fuel variable operations and maintenance costs, and will serve as inputs to the economic dispatch formulas in the PSCo Energy Management System.⁸ PSCo states that it would designate all of its generation resources as dispatchable under the Joint Dispatch Agreement, but that the other Parties would be able to hold back certain resources for off-system sales.⁹

5. In addition, PSCo states under the Joint Dispatch Agreement energy prices would be determined after delivering energy within the PSCo BAA. The Joint Dispatch Agreement pricing model would classify energy in three categories based on whether Parties have sufficient generation to serve and balance their load requirements: (1) Joint Dispatch Energy; (2) Deficit Energy; and (3) Surplus Energy. PSCo states that Joint Dispatch Energy would account for the vast majority of energy dispatched under the Joint Dispatch Agreement. PSCo proposes that Joint Dispatch Energy be priced on a per megawatt hour (MWh) basis at the System Marginal Price, which is the incremental cost of the next most economic MW of electricity capable of being generated by a unit committed under the Joint Dispatch Agreement. If a Party does not have sufficient generation to meet its hourly requirements, it would purchase Deficit Energy from PSCo. PSCo proposes that Deficient Energy be priced at the cost to PSCo to supply the Deficit Energy, plus the greater of \$10/MWh or 10 percent of PSCo's costs for providing the Deficient Energy.¹⁰ In addition, PSCo argues that charges for Joint Dispatch Energy would be based on incremental fuel costs and variable Operation and Maintenance costs, and, because only these out-of-pocket costs would be charged, the Parties would not over-recover their costs. PSCo further states that charges for Deficit Energy and Surplus

⁷ Ex. PSC-1 Testimony of John Welch at 11 (Welch Test.).

⁸ Joint Dispatch Agreement Transmittal at 5. The PSCo Energy Management System is the energy management computer system used by PSCo to economically optimize and dispatch generating resources. *See* Joint Dispatch Agreement Article 2.

⁹ This includes generation resources of PSCo's merchant function.

¹⁰ Tariff Revisions Transmittal at 5 (citing Welch Test. at 17).

Energy likewise track the out-of-pocket costs incurred in the supply of these services, with small incentive features to discourage the departure from optimal commitment practices that would give rise to Deficit Energy and Surplus Energy transactions.¹¹ PSCo states that Surplus Energy would be sold to PSCo when a Party has generation resources in excess of its requirements. PSCo proposes that Surplus Energy be priced on a per MWh basis at the System Marginal Price less one dollar per MWh.¹²

6. PSCo also states that it would receive a dispatch service management fee from the other Parties at a rate of \$0.50 per MWh for energy purchased and sold under the Joint Dispatch Agreement. According to PSCo, this fee has been agreed to by the Parties and is intended to compensate PSCo for the costs of developing and administering the Joint Dispatch Agreement.¹³

7. PSCo states that any load-serving entity within the PSCo BAA would be able to participate in the Joint Dispatch Agreement to the extent that it commits to contribute to the Joint Dispatch Agreement generation pool and obtains an agreement from its transmission provider to provide Joint Dispatch Transmission Service on a zero-cost, non-firm basis.¹⁴

B. Joint Dispatch Transmission Service

8. PSCo explains that Joint Dispatch Transmission Service would be a non-firm product provided only on an “as-available” basis for the sole purpose of facilitating energy transfers under the Joint Dispatch Agreement.

9. PSCo proposes to offer Joint Dispatch Transmission Service at a zero-rate to eligible customers, with no additional transmission charges assessed for the receipt or delivery of energy dispatched. PSCo states that the zero-rate term is based on the fact that the Joint Dispatch Transmission Service would only use non-firm Available Transfer Capability (ATC) that is unused after the scheduling deadlines for all other transmission have passed.¹⁵ According to PSCo, every Joint Dispatch Transmission Service customer would still be required to maintain adequate firm network and point-to-point service for

¹¹ Joint Dispatch Agreement Transmittal at 6.

¹² *Id.* at 5-6.

¹³ *Id.* at 6.

¹⁴ Tariff Revisions Transmittal at 4.

¹⁵ *Id.*

its wholesale and retail native load, and each Party would continue to pay third parties for point-to-point service.¹⁶ PSCo states that participation in the Joint Dispatch Agreement is voluntary and non-exclusive, and those transmission customers that do not participate in the Joint Dispatch Agreement would continue to be provided balancing service under Schedule 4 of the Xcel Energy Tariff.¹⁷

10. PSCo states that charges for power losses would continue to be the responsibility of the Joint Dispatch Transmission Service customer, and that these charges would be paid at pancaked rates, such that energy transactions delivered across two different systems would be assessed losses by both of those systems.¹⁸ PSCo also states that Joint Dispatch Transmission Service would only be used to dispatch energy under the Joint Dispatch Agreement within the PSCo BAA. Joint Dispatch Transmission Service would not be available for off-system sales of capacity or energy or for providing direct or indirect transmission service to a third party.¹⁹

11. PSCo explains that the conditions that an entity would be required to meet in order to take Joint Dispatch Transmission Service are that it: (1) is a load-serving entity within the PSCo BAA; (2) executes the Joint Dispatch Agreement with each participating transmission provider; (3) offers generating resources that meet the dispatch criteria into the Joint Dispatch Agreement pool; and (4) secures an agreement with the Joint Dispatch Agreement customers' host transmission provider to provide corresponding non-firm, zero-rate transmission service for use by other parties to the Joint Dispatch Agreement.²⁰ PSCo explains that Joint Dispatch Transmission Service would not be limited solely to PSCo, Platte River, and Black Hills, and that other similarly-situated entities may become parties to the Joint Dispatch Agreement and take Joint Dispatch Transmission Service if they meet the conditions for service. PSCo states that, due to the non-firm nature of Joint Dispatch Transmission Service, prospective Joint Dispatch Agreement customers would not need to arrange for transmission studies prior to taking Joint Dispatch Transmission Service.

¹⁶ *Id.* (citing Ex. PSC-1 Testimony of Terri K. Eaton (Eaton Test.) at 11).

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 5 (citing Eaton Test. at 13).

¹⁹ *Id.*

²⁰ *Id.* at 4 (citing Ex. PSC-3 at section 42).

12. PSCo argues that Joint Dispatch Transmission Service is in the public interest because it facilitates the efficient and cost-effective use of pooled generating resources under the Joint Dispatch Agreement. According to PSCo, the Parties would be able to access a broader pool of resources to serve their own native load requirements, and, as a result, would be able to purchase energy at a rate that is less than what it would cost the Party to produce a corresponding amount of energy. PSCo asserts that these cost savings would ultimately be passed on to wholesale and/or retail customers within the PSCo BAA.²¹

13. PSCo also states that the new Joint Dispatch Transmission Service would not adversely impact other transmission users, and is not unduly discriminatory. In this regard, PSCo explains that the Parties would provide transmission access based on residual ATC after the close of the last scheduling deadline during each intra-hour period. PSCo states that it would cap the pooled energy under the Joint Dispatch Agreement based on the maximum residual ATC on the system, and that Joint Dispatch Transmission Service would have the lowest curtailment priority, and would not displace other transmission service.²²

14. In addition, PSCo maintains that its proposed Joint Dispatch Transmission Service is not unduly discriminatory to non-participating transmission customers because it provides an alternative mechanism to manage the difference between scheduled and actual load, which is currently managed through Energy Imbalance Services under Schedule 4 of the Xcel Energy Tariff.²³ PSCo argues that the Joint Dispatch Agreement framework is analogous to an energy imbalance market or other energy market, albeit on a small scale. In this regard, PSCo states that the Commission has approved the use of zonal transmission rates based on the host transmission owner's cost and has eliminated intra-market pancaked transmission rates in a number of instances.²⁴ PSCo points out that the Commission approved CAISO's proposed tariff revisions to implement its Energy Imbalance Market in which neighboring BAAs may participate in CAISO's real-

²¹ *Id.* at 6 (citing Eaton Test. at 7).

²² *Id.*

²³ *Id.*

²⁴ *Id.* (citing *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007); *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082, *reh'g denied*, 124 FERC ¶ 61,033 (2008); *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 124 (2013)).

time market for imbalance energy.²⁵ PSCo argues that both the CAISO Energy Imbalance Market and PSCo's proposed Joint Dispatch Agreement aim to promote efficiency by employing a zonal transmission scheme to provide access to additional energy supplies.

15. Finally, PSCo states that its proposed tariff provisions do not depart from the Commission's previous determination that the Xcel Energy Tariff conforms with, or is superior to the *pro forma* Open Access Transmission Tariff (OATT).²⁶ Specifically, PSCo points out that the proposed tariff provisions serve only to provide a new type of service for Parties to the Joint Dispatch Agreement, and that Joint Dispatch Transmission service is not exclusive.

C. Proposed Effective Date and Request for Waivers

16. PSCo requests that the Commission approve the Joint Dispatch Agreement and Joint Dispatch Transmission Service attached provisions with an effective date of January 1, 2015. Black Hills requests an effective date of January 1, 2015 for its Joint Dispatch Transmission Service and its Concurrence Filing. With respect to the Joint Dispatch Agreement, PSCo requests waiver of the cost support and revenue projection requirements under sections 35.12 and 35.13 of the Commission's regulations. According to PSCo, it is not possible at this time to project the units that would be providing energy under the Joint Dispatch Agreement or the extent of Joint Dispatch Agreement transactions. According to PSCo, the management fee is intended to allow PSCo to recover its costs of developing and administering the Joint Dispatch Agreement, and is in line with other charges accepted by the Commission for recovery of difficult to quantify costs.²⁷

17. Finally, PSCo argues that, because no charge would be assessed for Joint Dispatch Transmission Service, cost support under section 35.13²⁸ of the Commission's regulations is not necessary.²⁹

²⁵ *Id.* (citing *California Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 (2014)).

²⁶ *Id.* at 7 (citing *Public Service Company of Colorado*, Docket No. ER10-2070-000 (Sept. 24, 2010) (delegated letter order)).

²⁷ Joint Dispatch Agreement Transmittal at 6.

²⁸ 18 C.F.R. § 35.13 (2014).

²⁹ Tariff Revisions Transmittal at 2, 7; Joint Dispatch Agreement Transmittal at 6.

II. Notice of Filings and Responsive Pleadings

18. Notice of PSCo's filing of tariff revisions to implement Joint Dispatch Transmission Service in Docket No. ER15-237-000 was published in the *Federal Register*, 79 Fed. Reg. 66,713 (2014), with interventions and protests due on or before November 20, 2014. Notice of PSCo's filing of the Joint Dispatch Agreement in Docket No. ER15-326-000 was published in the *Federal Register*, 79 Fed. Reg. 67,430 (2014), with interventions and protests due on or before November 25, 2014.

19. Notice of Black Hills' filing of tariff revisions to implement Joint Dispatch Transmission Service in Docket No. ER15-295-000 was published in the *Federal Register*, 79 Fed. Reg. 67,428 (2014), with interventions and protests due on or before November 21, 2014. Notice of Black Hills' Joint Dispatch Concurrence Filing in Docket No. ER15-348-000 was published in the *Federal Register*, 79 Fed. Reg. 68,230 (2014), with interventions and protests due on or before November 26, 2014.

20. Tri-State Generation and Transmission Association, Inc. (Tri-State) submitted a timely motion to intervene, protest, and request for consolidation in all dockets. The Colorado Public Utilities Commission (Colorado Commission) submitted a notice of intervention and comments in all dockets. Timely motions to intervene were filed by: Basin Electric Power Cooperative, Black Hills, Colorado Energy Consumers, Municipal Energy Agency of Nebraska, Powerex Corp., Western Area Power Administration, and Holy Cross Electric Association, Inc. in all dockets. Platte River submitted a motion to intervene and comments in support of PSCo's filing in Docket No. ER15-326-000 only. Intermountain Rural Electric Association (Intermountain) filed a timely motion to intervene in Docket No. ER15-326-000 only. Wisconsin Electric Power Company submitted a timely motion to intervene in Docket No. ER15-348-000 only. On December 5, 2014, PSCo, Black Hills, and Platte River filed motions for leave to answer and answers to the protest and comments.

21. On December 16, 2014, Commission staff issued a letter indicating that the filings submitted by PSCo and Black Hills were deficient and requesting further information.³⁰ On January 15, 2015, PSCo and Black Hills submitted a joint response (first Deficiency Response), as discussed below. On January 28, 2015, PSCo submitted a supplement to its first Deficiency Response to include two attachments that were omitted from its January 15 filing.

³⁰ The deficiency letter was issued in Docket Nos. ER15-237-000, ER15-326-000, ER15-295-000 and ER15-348-000.

22. Notices of PSCo's January 15, 2015 response to the deficiency letter in Docket Nos. ER15-237-001 and ER15-326-000,³¹ of PSCo's January 28, 2015 supplement to its first Deficiency Response in Docket ER15-237-002, and notice of Black Hills' response to the deficiency letter in Docket No. ER15-348-001 were published in the *Federal Register*, 80 Fed. Reg. 3230 (2015) and 80 Fed. Reg. 7444 (2015), with interventions and protests due on or before February 5, 2015.³² Notice of Black Hills' response to the deficiency letter in Docket No. ER15-295-001 was published in the *Federal Register*, 80 Fed. Reg. 3961 (2015), with interventions and protests due on or before February 5, 2015.

23. On February 5, 2015, Tri-State filed a supplemental protest in response to PSCo's first Deficiency Response. Intermountain filed timely motions to intervene in response to the first Deficiency Response and supplement submitted by PSCo and Black Hills.³³ On February 20, 2015, PSCo filed a motion for leave to answer and answer to Tri-State's supplemental protest. On March 4, 2015, Tri-State filed a motion for leave to answer and answer to PSCo's answer.

24. On March 16, 2015, Commission staff issued a second letter indicating that the filings submitted by PSCo and Black Hills were deficient and requesting further information.³⁴ On April 14, 2015, PSCo and Black Hills submitted a motion for extension of time until April 24, 2015 to respond to the March 16 deficiency letter. On April 24, 2015, PSCo and Black Hills submitted a joint response (second Deficiency Response). Also on April 24, 2015, PSCo and Black Hills submitted an additional supplement to their first Deficiency Response to submit corrected information concerning their responses to Commission staff's December 16, 2014 letter.

³¹ On January 22, 2015, an errata was issued to correct the January 15, 2015 notice to include Docket No. ER15-326-000.

³² On February 3, 2015, an errata was issued to shorten the comment due date to February 5, 2015 for PSCo's January 28, 2015 supplement to its first Deficiency Response filed in Docket No. ER15-237-002.

³³ Intermountain had previously only submitted a motion to intervene in Docket No. ER15-326-000.

³⁴ On March 18, 2015, an errata was issued to indicate that the March 16, 2015 deficiency letter inadvertently omitted Docket Nos. ER15-237-001, ER15-237-002, ER15-295-001 and ER15-348-001.

25. Notice of PSCo's and Black Hills' response to the March 16, 2015 deficiency letter and of their April 24, 2015 supplement were published in the *Federal Register*, 80 Fed. Reg. 25,287 (2015), with interventions and protests due on or before May 15, 2015.

26. On May 15, 2015, Tri-State filed a second supplemental protest in response to the second Deficiency Response filed by PSCo and Black Hills. On June 1, 2015, PSCo filed a motion for leave to answer and answer to Tri-State's second supplemental protest. On June 10, 2015, Tri-State filed a motion for leave to answer and answer to PSCo's June 1 answer.

A. Comments and Protests

27. Tri-State argues that the Commission should find that the Joint Dispatch Agreement and Joint Dispatch Transmission Service have not been shown to be just and reasonable, and should suspend those filings for the maximum period, subject to the outcome of a hearing.³⁵ Tri-State asserts that zero-rate Joint Dispatch Transmission Service is unjust and unreasonable.³⁶ According to Tri-State, the Commission's policy is to allow for discounts only to the extent necessary to increase throughput.³⁷ Tri-State argues that in this case discounts are not required and will not lead to increased system throughput or transmission revenues. As an example, Tri-State argues that Black Hills currently takes non-firm transmission service from PSCo, and the revenues from such services are credited against the transmission rates for PSCo's firm transmission customers. Tri-State asserts that, under the Joint Dispatch Agreement, participants would take non-firm point-to-point transmission service at no cost. Tri-State concludes that under the Joint Dispatch Agreement there is no incentive to reserve and pay for non-firm point-to-point transmission service, and that the discount would merely take away the credit to PSCo's firm transmission customers for the benefit of PSCo itself and the Joint Dispatch Agreement participants.³⁸ Tri-State also argues that PSCo has not submitted

³⁵ Tri-State Protest at 2. Tri-State also argues that the Commission should consolidate the proceedings involving PSCo's proposed Joint Dispatch Agreement and Joint Dispatch Transmission Service because the issues raised in PSCo's filings are intertwined. *Id.* at 20.

³⁶ *Id.* at 5.

³⁷ *Id.* (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,274 (1997); *American Electric Power Service Corp.*, 81 FERC ¶ 61,129, at 61,618 (1997)).

³⁸ *Id.* at 6.

any evidence showing that the zero-rate transmission service will increase throughput or generate revenues PSCo would not otherwise recover.³⁹

28. Tri-State asserts that, by providing non-firm point-to-point service to Platte River, Black Hills, and potentially other customers at a zero-rate, PSCo will forgo a portion of its revenues from its Annual Transmission Revenue Requirement. According to Tri-State, the result is that the uncredited portion of the Annual Transmission Revenue Requirement will be allocated to Tri-State and other transmission customers. Consequently, Tri-State argues that it and other transmission customers will end up subsidizing the so-called “free” Joint Dispatch Agreement transmission service provided to Platte River and Black Hills.⁴⁰

29. In addition, Tri-State contends that the Commission should distinguish participation in the Joint Dispatch Agreement from the recent CAISO Energy Imbalance Market orders.⁴¹ Tri-State asserts that PSCo’s reliance on the Commission’s recent decision on the CAISO Energy Imbalance Market as justification for its proposed zero dollar Joint Dispatch Transmission Service charge is flawed because it fails to address the fact that, unlike the Energy Imbalance Market, which spans multiple BAAs, PSCo’s proposed Joint Dispatch Agreement is specifically limited to PSCo’s own BAA.⁴² Tri-State also argues that, unlike the Energy Imbalance Market, PSCo is not proposing a real-time market based on competitive bidding; rather, because PSCo has market power within its BAA, the Joint Dispatch Agreement is based on a cost-based dispatch.

30. Tri-State also distinguishes the Commission’s reasoning in *PacifiCorp* for elimination of PacifiCorp’s transmission charges because the Commission held that PacifiCorp should not be required to impose a transmission charge because it was participating in the CAISO Energy Imbalance Market and CAISO’s generating resources do not pay for transmission service to participate in the real-time energy market.⁴³ Rather, Tri-State contends that PSCo, Platte River, and Black Hills are similarly situated to the Southwest Power Pool, Inc. (SPP) in the development of its real time energy imbalance market in that, under the Joint Dispatch Agreement, they are creating an imbalance market where none previously existed, and should therefore be required to

³⁹ *Id.* (citing Welch Test. at 10).

⁴⁰ *Id.* at 7.

⁴¹ *Id.*

⁴² *Id.* at 7-8.

⁴³ *Id.* at 8 (citing *PacifiCorp*, 149 FERC ¶ 61,057, at PP 66, 68 (2014)).

charge for transmission service under the Joint Dispatch Agreement, just as SPP was required to charge for transmission service in connection with its energy imbalance market.⁴⁴

31. Tri-State also argues that PSCo's proposed Joint Dispatch Agreement may unfairly benefit its merchant function.⁴⁵ In this regard, Tri-State argues that, although PSCo has market power within its BAA, it does not attempt to justify the Deficient Energy premium, the Surplus Energy penalty, or the management fee from a cost basis. Tri-State also asserts that PSCo's filings are silent as to other benefits PSCo may receive from the Joint Dispatch Agreement participants and how those benefits are reflected in the charges imposed by the Joint Dispatch Agreement. As an example, Tri-State argues that generators participating in the Joint Dispatch Agreement will be providing PSCo essentially free 15-minute regulation service, and that it is not clear how PSCo's costs of administering the Joint Dispatch Agreement are offset by any benefits it will receive.⁴⁶

32. Tri-State states that the Joint Dispatch Agreement and Joint Dispatch Transmission Service are structured as a cross-subsidy for the benefit of Joint Dispatch Agreement participants at the expense of PSCo's transmission customers. Therefore, to the extent that PSCo may over-recover against its actual costs of operating the Joint Dispatch Agreement and Joint Dispatch Transmission Service, Tri-State argues that the Commission should require that PSCo reimburse transmission customers those excess revenues to offset the transmission discount that PSCo is offering.⁴⁷ In addition, Tri-State argues that, under PSCo's proposal, there are no restrictions on under-supplying or over-supplying by a Joint Dispatch Agreement participant beyond the Surplus Energy penalty or the Deficit Energy premium. According to Tri-State, these charges may not stem abuse under certain circumstances. As an example, Tri-State argues that, if a Joint Dispatch Agreement participant's incremental cost of generation is lower than the Joint Dispatch Agreement System Marginal Price by more than the \$1/MWh fee, the Joint Dispatch Agreement participant will have every incentive to over-supply energy to PSCo.⁴⁸

⁴⁴ *Id.* at 9 (citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at PP 98-104 (2006)).

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.*

⁴⁸ *Id.* at 11-12.

33. Tri-State also argues that PSCo structured the Joint Dispatch Agreement without a reciprocal requirement for PSCo to charge itself a management fee, a Deficient Energy premium, or a Surplus Energy penalty for PSCo's own participation in the Joint Dispatch Agreement, and has offered free transmission service as an inducement for participants to engage in these balancing transactions with PSCo. Tri-State asserts that this structure provides PSCo generation a permanent price advantage over other participants. According to Tri-State, the Joint Dispatch Agreement and Joint Dispatch Transmission Service appear to be structured in a way that shifts revenues to PSCo's merchant function through offering free transmission service to Joint Dispatch Agreement participants, which appears to be inconsistent with the Commission's Standards of Conduct.⁴⁹ Tri-State is also concerned that PSCo's merchant function will receive extensive, and potentially sensitive, pricing and cost data from Joint Dispatch Agreement participants in the course of PSCo's administration of the Joint Dispatch Agreement, and that PSCo's merchant function could leverage this confidential information to gain an unfair competitive advantage in the bilateral hourly, day-ahead, and long-term wholesale electricity markets.

34. Additionally, Tri-State claims that the Joint Dispatch Agreement's terms of participation are unclear and appear discriminatory.⁵⁰ Specifically, Tri-State argues that PSCo's proposal is deficient because it does not provide for a circumstance that would arise if an entity desires to participate in the Joint Dispatch Agreement but cannot persuade its transmission provider to provide free transmission service. Tri-State argues that, to the extent such an entity is precluded from Joint Dispatch Agreement participation, that would be discriminatory and inconsistent with Commission policy on participation in loose power pools, such as the one created by the Joint Dispatch Agreement.⁵¹ Tri-State also argues that, even if a potential Joint Dispatch Agreement participant has transmission and is willing to include it at no cost in the Joint Dispatch Transmission Service, or has a transmission provider who is willing to include its transmission at no cost in the Joint Dispatch Transmission Service on behalf of the potential Joint Dispatch Agreement participant, there are open questions as to how much

⁴⁹ *Id.* at 12 (citing *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008) *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011)).

⁵⁰ *Id.* at 13.

⁵¹ *Id.* (citing *Mid Continent Area Power Pool*, 78 FERC ¶ 61,203, at 61,881 (1997)).

transmission each participant must bring or which transmission providers must offer up their transmission facilities.⁵²

35. Tri-State contends that the failure to charge for transmission service under the Joint Dispatch Agreement also creates the potential for discrimination. Specifically, Tri-State asserts that entities such as Tri-State with significant transmission assets would have to offer that transmission service for free in order to participate in the Joint Dispatch Agreement, while non-transmission owners would not have the same obligation because the onus to provide free transmission service would fall on their transmission providers. In this regard, Tri-State argues that the Commission has held that, to the extent that some participants provide transmission while others do not, there must be a charge for transmission service.⁵³ Tri-State concludes that the Commission should require PSCo to charge for transmission service because doing so would eliminate the potential for discrimination, may encourage greater participation, and is appropriate given PSCo's creation of a power pool. Tri-State also contends that the condition that prospective Joint Dispatch Agreement participants must be load-serving entities within the PSCo BAA and commit all loads within the BAA to Joint Dispatch Transmission Service also appears to be discriminatory, because it appears to exclude from participation any merchant generators that have no identifiable load in the PSCo BAA.⁵⁴

36. Finally, Tri-State argues that failure to tag the Joint Dispatch Transmission Service transactions will result in discriminatory curtailments under the Western Electric Coordinating Council's (WECC) Unscheduled Flow Mitigation Plan for congestion management procedures. According to Tri-State, this approach does not comply with the North American Electric Reliability Corporation (NERC) Reliability Standard INT-011-1, which requires intra-BAA tagging. Tri-State states that PSCo must tag Joint Dispatch Transmission Service transactions to ensure curtailment priorities are respected.⁵⁵

37. While the Colorado Commission takes no position on whether the Commission should accept the Joint Dispatch Agreement and proposed tariff revisions, it argues that more information is needed to determine whether certain provisions of the Joint Dispatch Agreement would render PSCo's proposal unjust, unreasonable or unduly discriminatory, or preferential. The Colorado Commission is concerned with: (1) how the Joint Dispatch

⁵² *Id.* at 14.

⁵³ *Id.* at 16 (citing *Mid-Continent Area Power Pool*, 76 FERC ¶ 61,261, at 62,342-43 (1996)).

⁵⁴ *Id.* at 17.

⁵⁵ *Id.* at 18-20.

Agreement will affect wholesale and retail rates for power; (2) whether the Joint Dispatch Agreement will result in undue discrimination between parties to the Joint Dispatch Agreement and parties in the PSCo BAA that do not join the BAA; and (3) how the Joint Dispatch Agreement will impact Colorado's environmental and other policy goals. The Colorado Commission urges the Parties to supplement the record in response to the issues it raises.

38. The Colorado Commission points out that there is disparate treatment between PSCo and the other Parties to the Joint Dispatch Agreement in that PSCo will commit all of its generation into the joint dispatch pool, but the other Parties to the Joint Dispatch Agreement will have the option not to commit, on an hour-to-hour basis, otherwise capable and available resources.⁵⁶ The Colorado Commission argues that the Parties should explain why PSCo is treated differently and address the potential that such disparate treatment could cause undue discrimination between Agreement signatories and non-Joint Dispatch Agreement signatories, or invite bidding behavior that would adversely affect Colorado ratepayers.⁵⁷ In addition, the Colorado Commission argues that the Parties should provide a more detailed accounting of how the expected cost savings resulting from the Joint Dispatch Agreement will be realized by customers of the participating utilities, as opposed to the utilities shareholders.⁵⁸

39. In addition, the Colorado Commission argues that there are important differences between the way energy and generator imbalances are priced currently under the Xcel Energy Tariff and how Deficit Energy and Surplus Energy would be priced under the Joint Dispatch Agreement. As an example, the Colorado Commission states that, under the current Xcel Energy Tariff, charges for energy imbalances are governed by several deviation bands, which result in higher penalties as the deviation between a utility's scheduled energy and the actual delivery of energy increases.⁵⁹ The Colorado Commission explains that the Joint Dispatch Agreement, by contrast, does not appear to increase the penalty level if the utility's deviation exceeds 7.5 percent. The Colorado Commission also argues that the Parties have not explained how the Joint Dispatch Agreement is expected to alter the dispatch of resources in Colorado and how any such change could affect the state's ability to meet environmental goals.

⁵⁶ Colorado Commission Comments at 5.

⁵⁷ *Id.* at 5, 7.

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 6 (citing Xcel Energy Tariff, Schedule 4 (Energy Imbalance Service)).

B. Answers

40. PSCo, Black Hills, and Platte River submitted answers in response to the comments and protest. PSCo responds to the concerns about the structure of its proposed Joint Dispatch Agreement by arguing that, unlike the CAISO Energy Imbalance Market, the units of the Parties to the Joint Dispatch Agreement will not be offered into a market for selection through a market clearing process. Rather, the Parties will provide to PSCo the same type of information that PSCo and other Parties use on a daily basis to dispatch their units economically. PSCo states that the activity of optimizing online resources will remain the same as it is for PSCo today, but that under the Joint Dispatch Agreement a larger suite of resources will be coordinated through a centralized dispatch process. PSCo also explains that the Joint Dispatch Agreement ensures that, among the committed and available units of the Parties, those that result in the lowest fuel cost will be dispatched first. PSCo also states that it is “all in” with its dispatch capabilities, as it has always been, and will continue to be due to its role as the balancing authority.

41. PSCo and Black Hills respond that the comments and protest mischaracterize several aspects of the Joint Dispatch Agreement and proposed revisions to PSCo and Black Hills’ tariffs to provide Joint Dispatch Transmission Service. First, PSCo and Black Hills argue that, contrary to Tri-State’s characterization of Joint Dispatch Transmission Service as “non-firm point-to-point” transmission service, the proposed Joint Dispatch Transmission Service is instead derived from ATC that is not being used by any entity with network or point-to-point service, whether firm or non-firm. PSCo and Black Hills explain that Joint Dispatch Transmission Service is of inferior quality by design to non-firm network or point-to-point transmission service.⁶⁰ PSCo explains that it does not expect that Joint Dispatch Transmission Service will erode revenues associated with non-firm point-to-point service provided by PSCo under Schedule 8 of its tariff.

42. In its answer, Platte River points out that although Tri-State qualifies to participate in the Joint Dispatch Agreement, it is not a participant currently, and it is therefore unclear why Tri-State has raised concerns that do not apply to it.⁶¹ Platte River also argues that Tri-State’s objection that PSCo’s proposal is limited in scope does not provide a ground for rejection or modification of the filings.⁶²

⁶⁰ PSCo December 5 Answer at 11; Black Hills Answer at 4.

⁶¹ Platte River Answer at 3.

⁶² *Id.* at 4.

43. In response to Tri-State's argument that the zero-price term for service under the Joint Dispatch Agreement shifts costs away from PSCo, Platte River, and Black Hills, leaving other transmission customers to subsidize the cost of this service, Black Hills argues that energy transfers using Joint Dispatch Transmission Service will facilitate more efficient use of transmission capacity and will not adversely impact other transmission users. Black Hills also asserts that Tri-State fails to establish that Joint Dispatch Transmission Service will erode revenues associated with non-firm point-to-point service.⁶³ Platte River argues that Tri-State's objections to the absence of specific transmission charges under Joint Dispatch Transmission Service are unfounded. Specifically, Platte River argues that Tri-State's reference to "zero-rate" transmission service is a misnomer because participating transmission owners are exchanging transmission service "in kind."⁶⁴ Platte River also disputes Tri-State's objection that Joint Dispatch Transmission Service amounts to subsidized transmission because under the proposal transmission capacity is exchanged in-kind.⁶⁵

44. With respect to Tri-State's argument that the Commission should distinguish PSCo's proposed Joint Dispatch Agreement from the CAISO Energy Imbalance Market, Black Hills states that it does not rely solely on similarities with the CAISO Energy Imbalance Market, and acknowledges substantive differences between the CAISO Energy Imbalance Market and PSCo's proposed Joint Dispatch Agreement and Joint Dispatch Transmission Service. Black Hills argues that the Commission's orders on the CAISO/PacifiCorp Energy Imbalance Market support approval of the Joint Dispatch Agreement and Joint Dispatch Transmission Service, including the absence of a separate transmission charge for Joint Dispatch Transmission Service. Platte River argues that Tri-State's assertion that the Joint Dispatch Agreement is unlike the CAISO Energy Imbalance Market is not a basis for objection to the proposal.⁶⁶

45. PSCo and Black Hills also contend that the SPP order relied on by Tri-State does not support Tri-State's assertion that a separate transmission charge should be imposed for transmission for imbalance energy transactions because the nature of the SPP transmission service and Joint Dispatch Transmission Service are different.⁶⁷ They

⁶³ *Id.* at 4-5.

⁶⁴ *Id.* at 6.

⁶⁵ *Id.* at 3.

⁶⁶ *Id.* at 2-3.

⁶⁷ PSCo December 5 Answer at 12 (citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289); Black Hills Answer at 6.

explain that, unlike SPP's energy imbalance market, Joint Dispatch Transmission Service is structured as a zonal or license plate service, in which a customer will not be responsible for additional charges beyond those it is already bearing for transmission facilities located within its zone.⁶⁸

46. In response to Tri-State's argument that the proposed \$0.50 management fee is unsupported, PSCo argues that, because the proposed arrangement has never been undertaken before, the costs that PSCo incurs to administer the Joint Dispatch Agreement are unquantifiable at this time. PSCo also states that the Commission has allowed the use of an adder or fee as a ratemaking convenience for the function of recovering difficult-to-quantify costs.⁶⁹

47. PSCo denies Tri-State's allegation that PSCo is using the Joint Dispatch Agreement to shift revenues to its merchant function to the detriment of its transmission customers, and has therefore run afoul of the Standards of Conduct.⁷⁰ PSCo states there has been no improper sharing of information between its merchant and transmission functions. Black Hills rejects Tri-State's assertions that the Joint Dispatch Agreement creates unfair advantages for PSCo over the other Parties. In response to Tri-State's argument that, under the Joint Dispatch Agreement PSCo will receive sensitive pricing and cost data that can be used to give PSCo's merchant function unfair competitive advantage, PSCo and Black Hills argue that Article 24 of the Joint Dispatch Agreement specifically precludes any Party from using information obtained through Agreement activities for any purpose other than purposes related to administration of the Joint Dispatch Agreement.⁷¹ PSCo also states that forward-looking data will be independently managed and will not be shared by Black Hills and Platte River, such that PSCo will not have access to actionable information that might unduly benefit its traders. Platte River argues that Tri-State's concern that provisions allowing the disclosure of cost data to

⁶⁸ PSCo December 5 Answer at 12 (citing *ITC Holdings Corp.*, 143 FERC ¶ 61,257 at P 124).

⁶⁹ *Id.* at 14 (citing *Louisville Gas and Elec. Co.*, 72 FERC ¶ 61,078 (1995); *Commonwealth Edison Co.*, 35 FERC ¶ 61,352 (1986)).

⁷⁰ *Id.* at 15.

⁷¹ *Id.* at 16; Black Hills Answer at 8. PSCo states that its affiliate Southwestern Public Service Company had a similar arrangement with Golden Spread Electric Cooperative and that there was never any suggestion of improper use of information. PSCo December 5 Answer at 16.

PSCo fail to protect confidential data or result in one-sided disclosures of such data is based on a misunderstanding of the proposal.⁷²

48. With respect to Tri-State's arguments that the Joint Dispatch Agreement and Joint Dispatch Transmission Service appear to be unduly discriminatory, PSCo and Black Hills respond that similarly-situated customers are not treated differently under the Joint Dispatch Agreement.⁷³ PSCo clarifies that a participant in the Joint Dispatch Agreement must: (1) be a load-serving entity in the PSCo BAA; (2) have a resource that is capable of being dispatched by PSCo on a real-time basis; and (3) agree (or have its transmission service provider agree) to implement a transmission service at comparable terms and cost to PSCo's Joint Dispatch Transmission Service. PSCo also states that the Parties would expect Tri-State to make transmission within the PSCo BAA available for dispatch on an as available basis if Tri-State were to join the Joint Dispatch Agreement.⁷⁴

49. Black Hills clarifies that there is no contribution of transmission facilities under the Joint Dispatch Agreement, and that a Party to the Joint Dispatch Agreement may choose which resources it designates under the Joint Dispatch Agreement. Black Hills also clarifies that under the Joint Dispatch Agreement a Party may not serve load outside the PSCo BAA and must designate all of its load within the PSCo BAA.⁷⁵ In addition, PSCo and Black Hills assert that Tri-State's argument that an entity would not be able to participate in the Joint Dispatch Agreement if it does not have a transmission provider that will provide transmission service for free is speculative, and therefore that there is no discrimination issue.⁷⁶ Platte River similarly argues that Tri-State's concern that the approach to transmission may discriminate against certain unidentified generators is speculative.⁷⁷

50. In response to Tri-State's argument that there is no way to guarantee that Joint Dispatch Transmission Service will have the lowest curtailment priority without tagging all Joint Dispatch Transmission Service transactions and that a transaction under the Joint

⁷² Platte River Answer at 10.

⁷³ PSCo December 5 Answer at 16; Black Hills Answer at 8.

⁷⁴ PSCo December 5 Answer at 17-18.

⁷⁵ Black Hills Answer at 8.

⁷⁶ PSCo December 5 Answer at 18; Black Hills Answer at 9 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,236, at P 39 (2013)).

⁷⁷ Platte River Answer at 8.

Dispatch Agreement may improperly avoid being subject to WECC congestion management procedures, PSCo states that it does not operate any qualified paths. However, PSCo explains that it uses two qualified paths adjacent to its BAA that are operated by the Western Area Power Administration, and that its use of these two qualified paths will continue to be tagged.⁷⁸ Black Hills argues that Joint Dispatch Transmission Service is not point-to-point service, and tagging is therefore not required under NERC Reliability Standard INT-011-1.

51. With respect to the Colorado Commission's concern as to whether the transition to Joint Dispatch Transmission Service will be smooth, PSCo states that there is no need to monitor offers or prices generated through a market clearing process because no such process will exist in conjunction with the Joint Dispatch Agreement.⁷⁹

52. PSCo responds to the Colorado Commission's comments that the Joint Dispatch Agreement may result in undue discrimination by arguing that the *pro forma* OATT requires that PSCo provide energy imbalance service, but that such service can be self-provided by any OATT customer. PSCo asserts that simply because the arrangement to manage imbalance under the Joint Dispatch Agreement is different from the arrangements under the *pro forma* OATT does not make the Joint Dispatch Agreement unduly discriminatory.⁸⁰

53. Black Hills argues that the same terms for Joint Dispatch Transmission Service are available to any entity that qualifies for the service and chooses to take it. Black Hills states that entities in the PSCo BAA that are not eligible to become parties to the Joint Dispatch Agreement are not similarly situated to PSCo, Black Hills, and Platte River, and have the option of purchasing Schedule 4 and Schedule 9 imbalance services from PSCo. Black Hills also argues that, contrary to the Colorado Commission's suggestion, the Joint Dispatch Agreement does not provide the opportunity for anti-competitive behavior based on disparate treatment of PSCo, Black Hills and Platte River resources; rather, the Joint Dispatch Agreement allows non-PSCo parties the option to designate all, a portion, or none of their eligible resources on an hourly basis.⁸¹

54. With respect to the Colorado Commission's request for information on whether the proposal requires approval of the State of Colorado, PSCo states that it does not

⁷⁸ PSCo December 5 Answer at 19.

⁷⁹ *Id.* at 8.

⁸⁰ *Id.* at 9.

⁸¹ Black Hills Answer at 12.

believe any state level approvals are required to initiate the Joint Dispatch Agreement.⁸² PSCo and Black Hills state that the net carbon impact of the Joint Dispatch Agreement will be *de minimis*. Black Hills also asserts that the Joint Dispatch Agreement and proposed tariff revisions will not harm Black Hills' customers and will instead reduce costs to Agreement participants and result in increased efficiencies and savings. Black Hills also argues that, because its wholesale sales are made only pursuant to market-based rates, consistent with Commission precedent, there are no wholesale rate concerns related to wholesale sales made only under market-based rate schedules.⁸³ In response to the Colorado Commission's concerns about the effects of the Joint Dispatch Agreement on retail rates, Black Hills argues that the Joint Dispatch Agreement will provide benefits to retail customers through lower energy costs due to a broader and more efficient economic energy dispatch under the Joint Dispatch Agreement.

III. First Deficiency Response

55. In their first Deficiency Response, PSCo and Black Hills argue that operation under the Joint Dispatch Agreement will not significantly affect the revenues generated from non-firm transmission service. PSCo and Black Hills state that Joint Dispatch Agreement participants will not know if they will be dispatched up or down in real-time, so they will continue to have the incentive to lock in margins from economic sales and will continue to purchase non-firm transmission to effect those sales. PSCo and Black Hills also emphasize that, even if Joint Dispatch Agreement operation caused a significant drop in non-firm revenues, those revenues do not constitute a significant percentage of transmission revenues.⁸⁴

56. In response to the questions regarding the Joint Dispatch Agreement management fee, PSCo and Black Hills state that the management fee was developed through negotiation with the other Joint Dispatch Agreement Parties.⁸⁵ PSCo and Black Hills state that PSCo is using a negotiated rate because it cannot identify the costs of implementing the Joint Dispatch Agreement with any level of precision. PSCo and Black Hills explain that Commission precedent supports adders for hard to quantify costs.⁸⁶

⁸² PSCo December 5 Answer at 9.

⁸³ *Id.* at 13 (citing *NiSource Inc.*, 92 FERC ¶ 61,068, at 61,240 (2000)).

⁸⁴ PSCo notes that non-firm revenues constitute .05 percent of total transmission revenues for the period of 2013-2014. First Deficiency Response at 3.

⁸⁵ *Id.* at 4.

⁸⁶ *Id.* at 5 (citing *Commonwealth Edison Co.*, 35 FERC ¶ 61,352 (1986); *Filing of Rate Schedules; Regulations Limiting Percentage Adders in Electric Rates for* (continued...))

PSCo and Black Hills state that revenues from the management fee will be captured in accounts for regional transmission revenues, and that the revenues and costs associated with the fee would be allocated to wholesale transmission customers.

57. In response to the questions regarding the pricing of Deficit and Surplus Energy, PSCo and Black Hills state that the parties to the Joint Dispatch Agreement are obliged to provide enough resources to meet their load requirements. PSCo and Black Hills state that the pricing of Deficit and Surplus Energy is intended to incent parties neither to lean on the system for capacity nor to dump capacity onto the system. PSCo and Black Hills also state that both the Deficit and Surplus Energy charges are intended to operate as penalties, and are not cost-based rates. In this regard, PSCo and Black Hills argue that the Commission has previously explained penalties are generally not cost-based and therefore cost-based support is not required.⁸⁷

58. In response to the question regarding the necessity of zero-rate transmission, PSCo and Black Hills state that any charge would reduce the level of generation re-dispatch.⁸⁸ PSCo and Black Hills state that this reduction in the level of dispatch would erode a significant amount of the benefits of the Joint Dispatch Agreement. PSCo and Black Hills further state that 90 and 96 percent, respectively, of their transmission customers are production customers as well, and that this group of customers will receive the anticipated benefits of the Joint Dispatch Agreement through fuel and energy cost reductions. PSCo and Black Hills argue that the smaller percentage of transmission-only customers will face no additional or *de minimis* costs as a result of the zero-rate transmission service.

59. In response to the questions on dispatch, PSCo and Black Hills state that the ATC will be updated by Joint Dispatch Agreement participants each hour and then 15 minute updates as required. In cases where dispatch would run over ATC limits, dispatch would be adjusted to bring flows within ATC limits. PSCo and Black Hills also emphasize that

Transmission Services, Order No. 84, FERC Stats. & Regs. ¶ 30,153, *clarified and reh'g denied*, Order No. 84-A, 12 FERC ¶ 61,017, *further clarified*, Order No. 84-B, 12 FERC ¶ 61,157 (1980); *Duke Power Co.*, 47 FERC ¶ 61,237 (1989)). PSCo also states that the Commission's determinations in *Terra Comfort Corp.*, 52 FERC ¶ 61,241, at 61,840 (1990) support the recovery of incremental energy costs.

⁸⁷ *Id.* at 8 (citing *Carolina Power & Light Co.*, 95 FERC ¶ 61,429, at 62,597 (2001) (*Carolina Power*); *Algonquin Gas Transmission, LLC*, 115 FERC ¶ 61,067, at P 16 (2006) (*Algonquin*)).

⁸⁸ *Id.* at 10.

no customer that has purchased firm or non-firm transmission will be impacted by Joint Dispatch Agreement operation.

60. In response to the question about the need for a prospective Joint Dispatch Agreement participant to acquire zero-rate transmission from its transmission provider, PSCo and Black Hills state that this requirement is essential for any prospective member.⁸⁹ PSCo and Black Hills state that, without such an agreement, there may not be capacity to deliver energy to a prospective customer. Also, PSCo and Black Hills state that such an agreement is necessary to avoid a free rider problem where a prospective customer would have access to PSCo and Black Hills' transmission system, but other Joint Dispatch Agreement Parties would not have equivalent access to the prospective Joint Dispatch Agreement customer's transmission system. PSCo and Black Hills further state that, while it has been alleged that such a requirement could pose an obstacle to membership in the Joint Dispatch Agreement, PSCo and Black Hills are unaware of any customer for which this has been an obstacle. PSCo and Black Hills state that the service should not impose additional costs on any transmission provider.⁹⁰

A. Tri-State Supplemental Protest

61. On February 5, 2015, Tri-State filed a supplemental protest in response to PSCo's first Deficiency Response, reiterating many of the arguments it raised in its protest and arguing that the Commission should reject the Joint Dispatch Agreement and Joint Dispatch Transmission Service tariff revisions, or set the proposal for hearing and settlement judge procedures.⁹¹ Tri-State also argues that the Parties' answers to Tri-State's protest and the Deficiency Response do little to provide an actual factual record upon which to make a determination as to the justness and reasonableness of PSCo's proposal. In addition, Tri-State contends that, given the delay until January 28, 2015 of PSCo's submission of the attachments containing the benefits analysis for its proposal, parties in this proceeding have not had adequate time to review the information provided.⁹²

62. In particular, Tri-State argues that the rate impact on transmission customers who are not parties to the Joint Dispatch Agreement will be significant. According to Tri-State, PSCo and Black Hills failed in their Deficiency Response to provide workpapers or

⁸⁹ *Id.* at 17.

⁹⁰ *Id.* at 18.

⁹¹ Tri-State Supplemental Protest at 35.

⁹² *Id.* at 36.

analysis and source data to support the revenue data. Tri-State also argues that the failure of PSCo and Black Hills to provide any data concerning their respective merchant functions' use of the transmission system is "highly suspect" and adds to the concern that their refusal to charge transmission service amounts to a cross-subsidy by non-participating transmission customers for the benefit of the Joint Dispatch Agreement participants.⁹³ Tri-State claims that non-firm revenues are larger than those claimed by PSCo and Black Hills, and it argues that PSCo and Black Hills exclude non-firm revenues by their own merchant functions in their calculations. Tri-State argues that this free ridership by Joint Dispatch Agreement participants constitutes an inappropriate subsidy to them by non-participants and that there is a material issue of fact as to how much that subsidy is.⁹⁴

63. Tri-State argues that, in its first Deficiency Response, PSCo does not provide any analysis or workpapers, and that it is problematic that the \$0.50 management fee is unsupported.⁹⁵ Tri-State argues that Commission precedent may support a fee for unquantifiable costs, but not costs that have simply not been quantified.⁹⁶ Further, Tri-State argues that PSCo does not have negotiated rate authority and cannot charge the Parties based on a negotiated rate, and in fact has horizontal market power in its BAA.⁹⁷

64. Tri-State also argues that there are problems with PSCo's treatment of the management fee as a permissible adder. First, Tri-State asserts that PSCo is able to estimate its fixed costs for software upgrades and IT support.⁹⁸ Tri-State argues that PSCo should be required to charge customers a fee based on estimated costs and then true-up those costs based on actual cost data.⁹⁹ In addition, Tri-State asserts that the costs associated with software upgrades is not an ongoing expense, yet PSCo proposes to continue to recover a \$0.50/MWh management fee during the entire term of the Joint Dispatch Agreement. Tri-State also reiterates its objection to PSCo not charging its own

⁹³ *Id.* at 6.

⁹⁴ *Id.* at 6-7.

⁹⁵ *Id.* at 8.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 9-10 (citing *Commonwealth Edison Co.*, 35 FERC ¶ 61,352, at 61,810 (1986); *Terra Comfort Corp.*, 52 FERC ¶ 61,241, at 61,840 (1990)).

⁹⁹ *Id.* at 10.

merchant function the management fee, given that PSCo's merchant function will also be receiving the benefits of the management of the Joint Dispatch Agreement.¹⁰⁰

65. In addition, Tri-State argues that PSCo has provided no analysis to demonstrate that the pricing of Deficit and Surplus Energy will provide a disincentive for participants to under- or over-supply energy under the Joint Dispatch Agreement, and offers no response to Tri-State's concerns that the pricing may create perverse incentives.¹⁰¹ Tri-State reiterates that, if a Party's incremental cost of generation is lower than the Joint Dispatch Agreement System Marginal Price by more than the \$1/MWh fee, the participant will have every incentive to oversupply the energy to PSCo.¹⁰² Tri-State disagrees with PSCo's claim that the Deficit and Surplus Energy charges are not cost-based and therefore no support is required. In this regard, Tri-State argues that PSCo's reliance on *Algonquin* and *Carolina Power* is misplaced because the penalties in those cases were not negotiated rates without any underlying cost support.¹⁰³

66. Tri-State also disagrees with PSCo's claim that Surplus Energy purchases will reduce the cost of imbalance energy purchases for any PSCo customer under Schedules 4 and 9 of the Xcel Energy Tariff. Tri-State argues that this assertion overstates the benefit to energy imbalance customers under the PSCo tariff because such customers are just as likely to be sellers of imbalance energy that will receive payments at the lower system incremental cost. According to Tri-State, this assertion also fails to reflect that Deficit Energy sales to Black Hills and Platte River under the Joint Dispatch Agreement may cause PSCo to dispatch higher cost resources, thereby driving up PSCo's system incremental cost to the detriment of energy imbalance customers.¹⁰⁴

67. Tri-State also reiterates its claim that PSCo and Black Hills have not demonstrated that a charge for Joint Dispatch Transmission Service will eliminate the benefits of service under the Joint Dispatch Agreement. In this regard, Tri-State asserts that the Parties anticipate benefits from the Joint Dispatch Agreement and Joint Dispatch Transmission Service that range from being sufficient to cover any transmission charges to being substantially more than the cost of any transmission charges.¹⁰⁵ Tri-State argues

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 14.

¹⁰² *Id.*

¹⁰³ *Id.* at 16-17.

¹⁰⁴ *Id.* at 17.

¹⁰⁵ *Id.* at 18.

that the Parties could charge \$3.75/MWh per transaction under the Joint Dispatch Agreement and still realize significant cost savings. According to Tri-State, the first Deficiency Response makes clear that the Parties intend to force transmission-only customers to subsidize participants in the Joint Dispatch Agreement.¹⁰⁶ Tri-State also reiterates its claim that PSCo has not adequately demonstrated the alleged benefits of the Joint Dispatch Agreement, arguing that PSCo's analysis of the alleged benefits of the Joint Dispatch Agreement is incomplete and inadequate.¹⁰⁷

68. Tri-State also argues that PSCo and Black Hills do not adequately address the problems that will be created as a result of the failure to tag the Joint Dispatch Transmission Service transactions. In this regard, Tri-State reiterates its argument that failure to tag these transactions will result in discriminatory curtailments under the WECC's Unscheduled Flow Mitigation Plan for congestion management procedures and that this approach does not comply with the NERC Reliability Standard INT-011-1.¹⁰⁸ Tri-State also disagrees with PSCo's claims that the WECC's Unscheduled Flow Mitigation Plan does not apply in the case of Joint Dispatch Transmission Service transactions because neither PSCo nor Black Hills operates any qualified paths and with PSCo's claim that Reliability Standard INT-011-1 should not apply to Joint Dispatch Transmission Service because it is not point-to-point transmission service.¹⁰⁹ In this regard, Tri-State argues that PSCo and Black Hills cannot simply state that Joint Dispatch Transmission Service is not point-to-point transmission service and cannot allow the Parties to avoid following NERC and Unscheduled Flow Mitigation Plan procedures.¹¹⁰

69. Tri-State again argues that the terms of participation in the Joint Dispatch Agreement are unclear and may be discriminatory. In particular, Tri-State argues that the requirement to procure zero-rate transmission service similar to the Joint Dispatch Transmission Service offered by Black Hills and PSCo is onerous. Tri-State argues that PSCo should provide an alternative to participate in the Joint Dispatch Agreement if a prospective participant is unable to secure such terms for transmission service from its transmission provider. Tri-State also argues that it is unclear what amount of transmission facilities a participant in the Joint Dispatch Agreement needs to contribute

¹⁰⁶ *Id.* at 19.

¹⁰⁷ *Id.* at 20.

¹⁰⁸ *Id.* at 23.

¹⁰⁹ *Id.* at 24-25.

¹¹⁰ *Id.* at 27.

for Joint Dispatch Transmission Service.¹¹¹ Tri-State also argues that, in the case of the Parties to the Joint Dispatch Agreement, the exchange of transmission “in-kind” presents cross subsidization issues because the Parties are not contributing the same amount of transmission or even similar amounts of transmission.¹¹²

70. Finally, Tri-State contends that there are market power concerns beyond those identified in the questions in the deficiency letter. In particular, Tri-State argues that it raised concerns in its protest that the Joint Dispatch Agreement is structured to allow PSCo’s merchant function to receive a substantial amount of sensitive pricing and market information. Tri-State argues that, notwithstanding PSCo’s argument that Article 24 of the Joint Dispatch Agreement will ensure that sensitive data remains confidential, Article 24 says nothing about preventing PSCo’s merchant function from using the dispatch information for its own profit.¹¹³ Tri-State also argues that PSCo fails to spell out any actual walls or other protections that ensure that PSCo’s merchant function will not have access to the commercially sensitive information related to dispatch. Tri-State contends that, because the load served under the Joint Dispatch Agreement includes sales by PSCo, Black Hills, and Platte River to third parties, the result of implementation of the Joint Dispatch Agreement will be the creation of a group of regional utilities that will look to forecasted incremental pricing under the Joint Dispatch Agreement to establish purchase and sales pricing, while also receiving the benefit of free transmission under Joint Dispatch Transmission Service.

B. PSCo Answer

71. On February 20, 2015, PSCo filed an answer to Tri-State’s supplemental protest. In response to Tri-State’s argument that PSCo undercounts the amount of non-firm revenues in its first Deficiency Response by failing to include its own revenues, PSCo states that its own non-firm revenues would have no material impact on its answer to the question in the deficiency letter.¹¹⁴ PSCo states that it primarily relies on network transmission to serve its native load. PSCo notes that the entirety of the PSCo merchant function’s utilization of non-firm point-to-point transmission service over all paths totals \$195,770. PSCo argues that, even under the unlikely assumption that all participants stopped using non-firm transmission service as a result of service under the Joint Dispatch Agreement, the impact on even non-firm revenue credits would be *de minimis*.

¹¹¹ *Id.* at 29.

¹¹² *Id.*

¹¹³ *Id.* at 31.

¹¹⁴ PSCo February 20 Answer at 3.

PSCo estimates that the total yearly impact would be a one percent drop in non-firm transmission revenue credits in this worst case scenario.¹¹⁵

72. PSCo also argues that Tri-State's argument that the Joint Dispatch Agreement could be discriminatory because the transmission exchanged would not be proportional is immaterial. PSCo states that even if the allegation of a non-proportional transmission exchange is correct it is unclear how this would make the Joint Dispatch Agreement discriminatory. PSCo states that it is aware of no Commission precedent that would prevent such a transmission exchange. Rather, PSCo argues that the transmission exchange is fair as it requires all participants to provide service on its system consistent with Joint Dispatch Transmission Service.¹¹⁶

73. With regard to the management fee, PSCo reiterates that its costs are difficult to quantify and that there is no available benchmark to project its costs. PSCo argues that its costs could vary significantly with the level of participation in the agreement. PSCo further states that it is not claiming the authority to collect its fee under a market-based rate authority. PSCo explains that this charge is to recover costs for software and not a price for wholesale energy.

74. PSCo further argues that it has justified its pricing for Deficit and Surplus Energy, contrary to Tri-State's assertions. PSCo emphasizes that Deficit and Surplus Energy prices are based on real benchmarks: the cost of providing Deficit Energy and the system marginal price, respectively. PSCo also states that the level of penalties is consistent with imbalance penalties in the *pro forma* OATT. Moreover, PSCo argues that Commission precedent states that such penalties are more a matter of judgment than an exact science.¹¹⁷

75. In response to Tri-State's concerns that Joint Dispatch Transmission transactions would not be tagged, PSCo notes that it provided a detailed explanation in its Deficiency Response as to how those transactions would be tagged. PSCo states that Joint Dispatch Transmission transactions will continue to be tagged consistent with NERC standards, and that the schedules will be available for congestion management and Unscheduled Flow Mitigation Procedures.¹¹⁸

¹¹⁵ *Id.* at 4.

¹¹⁶ *Id.* at 5-6.

¹¹⁷ *Id.* at 9 (citing *Carolina Power*, 95 FERC ¶ 61,429 at 62,597; *Algonquin*, 115 FERC ¶ 61,067 at P 16).

¹¹⁸ *Id.* at 10-11.

C. Tri-State Answer

76. On March 4, 2015, Tri-State filed an answer to PSCo's answer. Tri-State argues that neither PSCo, Black Hills nor Platte River have addressed the market power and cross-subsidization concerns Tri-State raised about the Joint Dispatch Agreement.¹¹⁹ Tri-State also reiterates its argument that PSCo has not justified the provision of Joint Dispatch Transmission Service at no cost. In addition, Tri-State again asserts that PSCo's management fee and Surplus and Deficit Energy charges have still not been shown to be just and reasonable. Tri-State also repeats its argument that PSCo must clarify which, if any Joint Dispatch Agreement transactions will be tagged. Tri-State states that it has been concerned all along that certain transactions (including firm transmission transactions) will continue to be tagged, while lowest priority Joint Dispatch Agreement transactions will not be tagged such that higher priority transactions will be subject to curtailments under the Unscheduled Flow Mitigation Plan, while Joint Dispatch Agreement transactions will not be curtailed.¹²⁰

IV. Second Deficiency Response

77. On March 16, 2015, Commission staff issued a second deficiency letter with three additional questions regarding PSCo's and Black Hills' proposals. Question 1 requested that PSCo describe how cost information of all parties to the Joint Dispatch Agreement will be compiled and verified. Question 2 requested that PSCo and Black Hills describe what steps PSCo will take to ensure that no violations of the Standards of Conduct will occur. Question 3 requested that PSCo explain why it is appropriate for PSCo's merchant function to not pay the management fee and to explain what impact, if any, over or under-collection of the actual costs of managing the Joint Dispatch Agreement will have on transmission rates.

78. With respect to Question 1, PSCo and Black Hills respond that a number of aspects of the Joint Dispatch Agreement will combine to ensure that joint dispatch operations and resulting prices are based on accurate cost data. PSCo and Black Hills state that the Joint Dispatch Agreement's participants would be required to provide cost information on each generator's variable operation and maintenance, heat rate coefficients, automatic generation control status, economic dispatch maximum capacity, economic dispatch minimum capacity, and ramp rate.¹²¹ PSCo and Black Hills state that

¹¹⁹ Tri-State March 4 Answer at 3-4.

¹²⁰ *Id.* at 6.

¹²¹ Second Deficiency Response at 2.

Joint Dispatch Agreement participants would be required to update these factors if there are changes in these costs.

79. PSCo and Black Hills also state that parties to the Joint Dispatch Agreement would be provided with details on price formation, and are permitted to audit any party to verify the accuracy of statements. PSCo states that this ability to audit will include access to cost data to ensure the parameters provided to PSCo are correct.¹²² PSCo and Black Hills also note that there will be standing committees, including an audit committee, with the duty to periodically audit operations under the Joint Dispatch Agreement. PSCo states that these audits could include cost data.

80. With respect to Question 2, PSCo and Black Hills respond that the transmission and marketing functions of PSCo will continue to function independently and will comply with the Standards of Conduct. PSCo and Black Hills clarify that the Joint Dispatch Agreement does not use non-public transmission function information and that no non-public coordination between the transmission and marketing functions of PSCo will occur under the Joint Dispatch Agreement. PSCo and Black Hills also state that PSCo has Standards of Conduct procedures to ensure that: (1) employees engaged in transmission system operations function independently from sales and marketing employees; (2) transmission function information is not shared with employees engaged in sales or marketing through non-public communications conducted off the OASIS or the website; (3) no employee may act as a conduit for sharing non-public transmission function information with employees engaged in sales or marketing; and (4) sales or marketing employees are only allowed access to transmission function information available on PSCo's website or OASIS. PSCo and Black Hills state that they believe no further steps are necessary beyond ensuring these policies remain in place.¹²³

81. In response to Question 3, PSCo and Black Hills respond that the costs that will be incurred related to the Joint Dispatch Agreement are not transmission-related costs, but rather costs that should be borne by PSCo's merchant function. PSCo clarifies that it is not the PSCo transmission function that will be charging the management fee, but the PSCo merchant function.¹²⁴ PSCo states that the costs of implementing the Joint Dispatch Agreement will be recovered from PSCo's wholesale and retail power sales customers through the existing power rates.¹²⁵ According to PSCo and Black Hills, the

¹²² *Id.* at 3.

¹²³ *Id.* at 4.

¹²⁴ *Id.* at 5.

¹²⁵ PSCo April 24 Supplemental Response at 2. PSCo provides wholesale requirements power sales service to certain customers pursuant to a cost-based formula (continued...)

purpose of the management fee is to create a revenue credit to provide a contribution to the costs of implementing the Joint Dispatch Agreement from the parties to the Joint Dispatch Agreement and to partially offset the amount borne by wholesale and retail power sales customers. PSCo states that the revenues from the management fee will be revenue credited to PSCo's revenue requirement in PSCo's wholesale and retail power sales rates. PSCo and Black Hills also state that PSCo's merchant function, not its transmission function, will provide the services associated with the provision of Joint Dispatch Service and will ultimately bear all costs such that transmission customers will not bear any costs of the Joint Dispatch Agreement. PSCo and Black Hills do not believe it would serve any purpose to charge PSCo's merchant function for the management fee because PSCo's merchant function will already incur and pay for those costs, stating that "PSCo's contributions to the [Joint Dispatch Agreement] may be viewed as in-kind."¹²⁶ PSCo and Black Hills also state that it would be an unnecessary and inappropriate result for PSCo's merchant function to attempt to pay itself a management fee because it would require increasing the costs to PSCo's production customers in the amount of the management fee to be paid by PSCo's merchant function.

82. In addition, PSCo and Black Hills state that, because the costs for managing the Joint Dispatch Agreement are hard to quantify, it is not possible to determine whether the management fee over- or under-collects costs with any degree of precision, but that over- or under-collection of the management fee will have no impact on transmission rates. Specifically, PSCo and Black Hills state that all of the wholesale jurisdiction's share of costs associated with the Joint Dispatch Agreement will be charged to PSCo's merchant function and paid for by PSCo's wholesale and retail power formula rate customers. In addition, in their supplemental response filed on April 24, PSCo and Black Hills explain that the management fee revenues from parties to the Joint Dispatch Agreement will be credited to the wholesale and retail power formula rate to provide a contribution to the Joint Dispatch Agreement cost responsibility and partially offset the amounts borne by PSCo's wholesale and retail power sales customers.¹²⁷

83. PSCo and Black Hills also state that the activities associated with management of the Joint Dispatch Agreement will be incurred by PSCo's merchant function and its business systems organization, and PSCo's transmission function will not incur

rate, with an annual true-up to actual costs, under its Assured Power and Energy Requirements Service Tariff. PSCo also provides requirements services pursuant to customer-specific power purchase agreements, which refer to and incorporate by reference the production rate provisions from its requirements service tariff.

¹²⁶ Second Deficiency Response at 6.

¹²⁷ April 24 Supplemental Response at 6.

additional costs as a result of implementation of the Joint Dispatch Agreement, and thus neither costs nor revenues associated with the Joint Dispatch Agreement will be allocated to transmission.¹²⁸ In addition, PSCo and Black Hills state that the extent of PSCo's transmission function activities associated with the Joint Dispatch Agreement will be limited to processing and administering the associated Joint Dispatch Transmission Service Agreements, which is currently limited to three parties.

84. PSCo and Black Hills also state that, in preparing the response to the March 16 deficiency letter, PSCo realized that the information provided in its first Deficiency Response required correction. Specifically, PSCo clarifies that, "[u]pon further analysis, the software and hard-to-quantify personnel costs" associated with the Agreement will not be recorded in Account No. 561.4, but will initially be captured in Account No. 107 (Construction Work in Process - Electric), and upon being placed into service they will be assigned to the appropriate capital account (Account No. 303, Intangible Plant).¹²⁹

A. Tri-State Second Supplemental Protest

85. Tri-State submitted a second supplemental protest on May 15, 2015 in response to the second Deficiency Response. In its second supplemental protest, Tri-State reiterates many of the arguments in its first two protests. Specifically, Tri-State argues that the low priority Joint Dispatch Transmission Service offered under PSCo's Joint Dispatch Agreement is essentially a preferential service that is priced at zero and exempted from the WECC curtailment regime, to the detriment of higher priority transmission services. Tri-State also argues that under the Joint Dispatch Agreement, PSCo's merchant function will receive but not itself pay a management fee and will charge the parties to the Joint Dispatch Agreement balancing fees for Surplus Energy and Deficit Energy. Tri-State argues that there is no basis to assess the magnitude of the costs of the management fee or to determine whether the crediting of revenue from this fee is appropriate, given that PSCo has not provided cost support for the fee or tariff revisions.¹³⁰

86. According to Tri-State, the service under the Joint Dispatch Agreement is PSCo's attempt to leverage its control over its transmission system to subsidize and support its merchant business.¹³¹ In addition, Tri-State argues that the Joint Dispatch Agreement provides that, among the Parties, PSCo's merchant function has preferential access to

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Tri-State May 15, 2015 Second Supplemental Protest at 11.

¹³¹ *Id.* at 4-5.

commercially sensitive data over other Parties to the Joint Dispatch Agreement, who may request such information only to verify charges.¹³² Tri-State suggests that the preferential nature of the service under the Joint Dispatch Agreement could be fixed by charging for and tagging the service.

B. PSCo Answer

87. On June 1, 2015, PSCo filed an answer to Tri-State's second supplemental protest. PSCo argues that Tri-State's position appears to be based on a misunderstanding of aspects of the proposed rates. In response to Tri-State's assertion that the issues of fact raised by PSCo's proposal that should be set for hearing and settlement judge procedures, PSCo argues that what Tri-State identifies as questions that must be resolved in this case have already been explained by PSCo and Black Hills.¹³³

88. With respect to Tri-State's assertion that Joint Dispatch Transmission Service is a cross-subsidy imposed on PSCo's transmission-only customers for the benefit of PSCo's merchant function, PSCo asserts that Joint Dispatch Transmission Service is a form of transmission exchange and is not a discounted form of non-firm transmission service or of any other existing service under the *pro forma* OATT, and is only provided to the extent ATC is available and unused after all scheduling deadlines have passed. In addition, PSCo states that every Joint Dispatch Transmission Service Customer will still be required to maintain adequate firm network and point-to-point service for its wholesale and retail native load located in the PSCo BAA.¹³⁴

89. In response to Tri-State's assertion that there are alternative mechanisms to the Joint Dispatch Agreement proposal, PSCo argues that this is not a disputed issue of material fact. PSCo also contends that it has already provided cost support for both the Joint Dispatch Transmission Service rate and the management fee in its filings.¹³⁵ In addition, PSCo reiterates that participation in the Joint Dispatch Agreement is available on a nondiscriminatory basis, and that absent evidence that the eligibility criteria for receiving service the Joint Dispatch Transmission Service rate create unreasonable barriers to participation, there is nothing discriminatory about such eligibility criteria. In this regard, PSCo argues that because Tri-State has not alleged that any parties are

¹³² *Id.* at 7-8 (citing Joint Dispatch Agreement at Article 20.1).

¹³³ PSCo June 1 Answer at 2.

¹³⁴ *Id.*

¹³⁵ *Id.* at 4-5.

actually prevented from participating in the Joint Dispatch Agreement, its concerns are only hypothetical.

90. With regard to Tri-State's allegations that the Joint Dispatch Agreement provides an unduly preferential exemption to PSCo from payment of the management fee, PSCo argues that it currently bears, and its production customers currently pay, the costs underlying the management fee. PSCo states that the purpose of the charge to other Joint Dispatch Agreement participants is to receive a contribution to the costs to curb subsidization of other Joint Dispatch Agreement participants by PSCo's production customers.¹³⁶ PSCo also argues that its existing tariff already specifies how management fee credits should be provided to PSCo's production customers.

91. In response to Tri-State's assertion that PSCo does not have market-based rate authority to negotiate a management fee or Deficit or Surplus Energy charges, PSCo argues that the justness and reasonableness of the management fee and Deficit and Surplus Energy charges are not predicated on PSCo's market-based rate authority to make wholesale sales of energy. PSCo asserts that here, it has filed the charges in a section 205 filing for Commission review.¹³⁷ Furthermore, PSCo argues that the Deficient and Surplus Energy charges are similar to the existing, Commission-accepted penalty provisions of PSCo's imbalance services under the Xcel Energy OATT. With respect to Tri-State's argument that the Surplus and Deficit Energy charges may create perverse incentives to over or under-supply energy PSCo asserts that it has explained why the Joint Dispatch Agreement does not create perverse incentives, and argues that a Joint Dispatch Agreement participant that continually and repeatedly oversupplied energy may be deemed in breach of the Joint Dispatch Agreement.¹³⁸ PSCo also contends that Tri-State's argument that PSCo's intent not to tag specific Joint Dispatch Transmission Service transactions violates NERC reliability standard INT-011-1 and that transactions on qualified paths throughout WECC could be affected by Joint Dispatch Transmission Service is just speculation.¹³⁹

92. With respect to Tri-State's argument that the Joint Dispatch Agreement provides preferential access to information to PSCo's merchant function, PSCo reiterates that its merchant function will only gain access to dispatch-related information necessary to accomplish the joint dispatch provided under the Joint Dispatch Agreement. PSCo

¹³⁶ *Id.* at 6.

¹³⁷ *Id.* at 8.

¹³⁸ *Id.* at 9-10 (citing PSCo February 20 Answer at 8).

¹³⁹ *Id.* at 10.

explains that the other Joint Dispatch Agreement participants will have access to the same information from PSCo. In addition, PSCo argues that for decades, utilities have engaged in coordination arrangements requiring sharing of operational information, such as joint interconnection agreements, bilateral economy energy exchange agreements, operation and maintenance agreements, and joint operating and ownership agreements for generation facilities. PSCo asserts that there is no *per se* prohibition on the sharing of operational information related to generator operation between the merchant functions of utilities.¹⁴⁰

93. Finally, PSCo argues that the fact that Joint Dispatch Agreement participants must enter into Joint Dispatch Transmission Service agreements with the PSCo transmission function as a condition to Joint Dispatch Agreement participation does not mean that the Joint Dispatch Agreement involves the offering of transmission service. PSCo states that “the PSCo merchant function will administer the Joint Dispatch Agreement and will have no ability through the Joint Dispatch Agreement to study, grant, or deny transmission service or engage in any type of transmission function.”¹⁴¹ PSCo argues that the Commission recognizes that balancing load with energy or capacity, a primary purpose of the Joint Dispatch Agreement, is not a transmission function.

94. Furthermore, PSCo contends that Tri-State’s assertions that PSCo’s merchant function will be providing scheduling and imbalance service under the Joint Dispatch Agreement are simply mischaracterizations of how the Joint Dispatch Agreement will operate. PSCo states that PSCo will not perform scheduling activities on behalf of any Party to the Joint Dispatch Agreement other than itself. PSCo also explains that it will balance the load and resources of Joint Dispatch Agreement participants and as a result Black Hills and Platte River will not incur imbalance charges. According to PSCo, this balancing function is not being provided by PSCo’s transmission function but is an attribute of a wholesale arrangement between the Joint Dispatch Agreement Parties that is comparable to other wholesale partial and full requirements arrangements.¹⁴²

C. Tri-State Answer

95. On June 10, 2015, Tri-State filed an answer to PSCo’s June 1 answer. Tri-State takes issue with PSCo’s June 1 answer in its entirety, arguing that it merely continues the trend of unsupported assertions that PSCo has made and does not add to the factual

¹⁴⁰ *Id.* at 12.

¹⁴¹ *Id.* at 13.

¹⁴² *Id.*

record.¹⁴³ Tri-State also contends that PSCo's June 1 answer contains several misleading statements, and Tri-State reiterates many of the arguments included in its prior pleadings.

V. Discussion

A. Procedural Matters

96. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

97. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

98. We appreciate PSCo's efforts to obtain efficiency benefits and potential cost savings through a centralized system of energy dispatch within the PSCo BAA. However, as discussed below, we find that the Joint Dispatch Agreement has not been shown to result in rates that would be just and reasonable and not unduly discriminatory or preferential. Therefore, we will reject PSCo's Joint Dispatch Agreement and the tariff revisions proposed by PSCo and Black Hills to implement Joint Dispatch Transmission Service.

99. First, we find that PSCo has not shown that its proposed payment structure for resources dispatched under the Joint Dispatch Agreement would result in rates that are just and reasonable. Unlike other joint dispatch agreements that have been accepted by the Commission,¹⁴⁴ PSCo proposes to pay resources dispatched as Joint Dispatch Energy

¹⁴³ Tri-State June 10 Answer at 4.

¹⁴⁴ See *Nevada Power Co.*, 145 FERC ¶ 61,238 (2013) (accepting interim Joint Dispatch Agreement under which system resources would be dispatched on a least-cost basis and participants would equally split the cost savings); *Nevada Power Co.*, Docket Nos. ER15-11-000 and ER15-14-000 (Nov. 5, 2014) (delegated letter order approving one-year extension of interim Joint Dispatch Agreement accepted in *Nevada Power Co.*, 145 FERC ¶ 61,238); see also *Duke Energy Corp.*, 139 FERC ¶ 61,193 (2012) (accepting Joint Dispatch Agreement under which system resources would be dispatched on a least-cost basis and participants would equally split the cost savings, made in connection with the proposed merger of Duke Energy and Progress Energy).

at a system-wide price derived from the system-wide marginal cost. As a result, PSCo's generation would not be compensated at cost-based rates; rather, it will be compensated at a ceiling rate derived from the cost of the most expensive MW required to serve aggregate loads of the parties under the Joint Dispatch Agreement. The Commission has previously addressed a similar rate structure. In *Western*, the Commission found that while a ceiling rate is technically a cost-based rate, it provides the flexibility of a market-based rate, and that absent authorization to sell at market-based rates, a seller may be able to exercise market power with respect to such cost-based ceiling rate transactions.¹⁴⁵ Here, while PSCo does not have discretion to contract for rates under a cost-based ceiling as in *Western*, it still has the ability to exercise market power through the costs of the units it commits to serve load. PSCo has not been granted, and is not seeking, market-based rate authority in the PSCo BAA. As such, and although the Joint Dispatch Agreement only dispatches and prices Joint Dispatch Energy based on system-wide marginal cost, the Commission finds that there are insufficient protections to mitigate against the potential market power, particularly when the market is to be administered by the entity found to have market power in the relevant BAA.¹⁴⁶ However, we note that the Commission has accepted other joint dispatch agreements with varying payment structures, including those that split the savings equally among participants.

100. Second, as proposed, participation in the Joint Dispatch Agreement also requires the Parties to grant PSCo's merchant function¹⁴⁷ access to non-public information that, under the Standards of Conduct, should be restricted to PSCo's transmission function. The Standards of Conduct restrict access to this non-public information to the transmission function because having access to such information would afford the merchant function an undue competitive advantage.¹⁴⁸ The Standards of Conduct are

¹⁴⁵ *Western Systems Power Pool*, 122 FERC ¶ 61,139, at PP 21-24 (2008) (*Western*).

¹⁴⁶ *Alabama Power Co.*, 151 FERC ¶ 61,071, at P 18 (2015).

¹⁴⁷ Section 358.3(c) of the Commission's regulations defines "marketing functions" to include public utilities and their affiliates that engage in the sale for resale of electric energy or capacity in interstate commerce. *See* 18 C.F.R. § 358.3(c) (2014). Hereafter, in this order "marketing function" is referred to as "merchant function" for purposes of consistency with PSCo's characterization of its marketing function.

¹⁴⁸ 18 C.F.R. § 358.2 (2014); *see also Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, Order No. 787, FERC Stats. & Regs. ¶ 31,350, at P 125 (2013), *order on reh'g*, Order No. 787-A, 147 FERC ¶ 61,228 (2014) (adopting a strict No-Conduit rule to address concerns regarding the improper use of confidential and potentially commercially-sensitive

(continued...)

intended to ensure that transmission providers treat all transmission customers on a not unduly discriminatory basis and do not grant any undue preference or advantage. Thus, a transmission provider may not benefit its own merchant function by providing access to non-public transmission function information.¹⁴⁹ For example, even where a transmission customer voluntarily gives consent for the transmission provider to provide non-public information to the merchant function, the transmission provider must post notice on its website of that consent along with a statement that it did not provide any operational or rate-related preferences.¹⁵⁰ We find that, because the Joint Dispatch Agreement is administered by PSCo's merchant function, it is not possible to prevent PSCo's merchant function from using the commercially sensitive, non-public information to its own competitive advantage.

101. However, many of the Commission's concerns regarding possible Standards of Conduct violations and oversight of the administration of the Joint Dispatch Agreement could be remedied if the dispatch service under the Joint Dispatch Agreement was provided by PSCo's transmission function or another division of PSCo that would be prohibited from being a conduit for sharing non-public transmission information with PSCo's merchant function. If dispatch was performed by PSCo's transmission function, non-public information could be quarantined on the transmission side of the company. Moreover, the incentives for deviating from the proposed agreement's terms could be significantly reduced since the dispatch would not be performed by the merchant function that would benefit from sales under the agreement.

102. For the reasons discussed above, we will reject PSCo's Joint Dispatch Agreement. Because PSCo's and Black Hills' tariff revisions to implement Joint Dispatch Transmission Service implement the Joint Dispatch Agreement, we will reject these tariff revisions as well.

The Commission orders:

(A) PSCo's tariff revisions implementing Joint Dispatch Transmission Service are hereby rejected, as discussed in the body of this order.

generator-specific information if disclosed to a third party or to a transmission operator's marketing function employees).

¹⁴⁹ 18 C.F.R. § 358.2(a)-(d); 18 C.F.R. § 358.5; 18 C.F.R. § 358.6 (2014).

¹⁵⁰ 18 C.F.R. § 358.7(c) (2014).

(B) Black Hills' tariff revisions implementing Joint Dispatch Transmission Service and its Joint Dispatch Concurrence Filing are hereby rejected, as discussed in the body of this order.

(C) PSCo's Joint Dispatch Agreement is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.